

11/16/2021

item 6




City Council Meeting

Item #6 (21-13270)
Council Discussion and Potential Action on Levi's Stadium's Condition of Approval P22(c) Regarding Nighttime Outdoor Non-NFL Events

November 16, 2021

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City of Santa Clara
The Center of What's Possible

Background

- During the 2021 Goal and Priority Setting Session, a majority of the City Council expressed interest in revisiting the Council's policy on "Levi's Stadium's curfew" to attract more non-NFL events and generate more revenue.
- "Levi's Stadium Curfew" is a term commonly used to refer to the formal Conditions of Approval (COA) for the 49ers Santa Clara Stadium Project, which the 49ers agreed to.

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POST MEETING MATERIAL

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Background

COA-P22(c)

- Condition of Approval P22(c) (COA-P22(c)) provides the following restrictions for outdoor non-NFL events:

Night outdoor non-NFL events shall be scheduled to end not later than 10:00 PM Sunday through Thursday and 11:00 PM Friday and Saturday, unless otherwise approved by the City Manager or their designee.

1. *Stadium event field lighting (not including emergency lighting, normal operations lighting, or lighting necessary for post-event cleanup, maintenance, or equipment load-out) shall be doused not later than one hour following the conclusion of the event.*
2. *Speaker sound system shall be operated not more than one-half hour following conclusion of a non-NFL event.*

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Background

TERMINATED MANAGEMENT AGREEMENT

- Policy topic is presented within the context of a terminated Management Agreement.
- Council can take action to establish parameters for extending the curfew but ultimately the success of Council's action rests with Stadium Manager's compliance and implementation.
- Council should review its actions with consideration of the following:
 1. Has the Stadium Manager complied with legal obligations of the Management Agreement and all other Agreements?
 2. Has the Stadium Manager demonstrated the ability to mitigate community impacts when Stadium events take place?
 3. Has the Stadium Manager demonstrated that it can produce money-making events?
 4. Is the Stadium Manager in compliance with all legal requirements for non-NFL events?

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Overview

COUNCIL'S ITEMS FOR FUTURE DISCUSSION/CONSIDERATION

1. Extending the curfew for summer and weekend events only
2. Extending the curfew once or twice a year
3. Increasing the curfew violation fee
4. Presenting the 2018 Community Survey results on noise and the curfew
5. Engaging the community to determine how many times the curfew should be extended
6. Learning more about California's Great America's noise curfew
7. Researching other cities' noise curfews for stadiums located in residential areas

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Agenda

1. Stadium Environmental Impact Report (EIR) Considerations
2. Information on Items #1-7
3. Noise Monitoring Program
4. Policy Alternatives for Pilot Program

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1. Stadium EIR

CEQA CONSIDERATIONS

- Any policy discussions regarding noise (including the curfew and the number of events per year) must occur within the parameters of the EIR.
- EIR considered the noise impacts of two professional football teams occupying the stadium, for a total of 22 NFL game days per year. EIR also considered the impacts of approximately 26 days of large-scale non-NFL events.
- Noise impacts from NFL and non-NFL events were identified as Impacts NOI-4, NOI-5, NOI-6, and NOI-7 in the EIR, and all four were determined to be significant unavoidable impacts.

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1. Stadium EIR

CEQA CONSIDERATIONS

- EIR anticipated noise impacts from NFL events, non-NFL sporting events, and concerts would be equivalent (at the nearest neighborhood, NFL games would produce 61-66 dBA Leq; non-NFL sports would produce 61-66 dBA Leq; and concerts would produce 66 dBA Leq or less).
- 26 days of non-NFL events, plus 22 days of NFL games analyzed for two teams occupying the stadium, resulted in significant noise impacts based on assumed 48 large scale events/year. Since only one team ultimately occupied the stadium, a maximum of 12 of those days are utilized by the 49ers, leaving at least 36 days for non-NFL events.
- No additional CEQA analysis is necessary to gauge the noise impacts for an increased number of concerts and other large non-NFL Events as long as they fall within the numbers cited for Impacts NOI-4 through NOI-7.

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2. Requested Information

1. EXTENDING THE CURFEW FOR SUMMER AND WEEKEND EVENTS ONLY
2. EXTENDING THE CURFEW ONCE OR TWICE A YEAR

- COA-P22(c) allows City Manager to approve exemptions for events that plan to exceed established time limits. In 2017, the Council directed former Acting City Manager to not provide exemptions under COA-P22(c).
- As Council revisits past direction, the following topics should be considered:
 1. Naming Rights Agreement;
 2. Noise and other event-related impacts;
 3. Financial feasibility; and,
 4. Recent reductions to staffing resources.

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2. Requested Information

NAMING RIGHTS AGREEMENT

- Naming Rights Agreement between SCSA and Levi's requires at least 36 Non-NFL "Major Events" with 25,000+ attendees every three contract years. ***Number of large events held during the current three-year period is 5.***
- 2nd Amendment to the Management Agreement provides that the Stadium Manager will be responsible for liquidated damages if less than 36 events are held.

NOISE AND OTHER EVENT-RELATED IMPACTS

- Stadium events have an impact on surrounding neighborhoods (regardless of city boundaries), including traffic, parking, and disruptive attendee behavior pre and post event, such as loitering, security/enforcement and noise control.
- City of San Jose issued recent letter regarding Levi's Stadium events' adverse impacts to their neighborhoods. ***Staff and Stadium Manager continue to work to mitigate impacts.***

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2. Requested Information

FINANCIAL FEASIBILITY

**Levi's Stadium
Net Revenue for Non-NFL Events
by Event Type
As of March 31, 2021**

EVENT TYPE	2014/15		2015/16		2016/17		2017/18		2018/19		2019/20		2020/21	
	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue
Ticketed Events														
Concerts	0	\$ -	7	\$ 3,791,995	4	\$ 2,428,572	2	\$ 1,819,699	3	\$ 1,438,848	1	\$ 856,583	0	\$ (162)
Sporting events:														
Football (non-NFL)	5	(3,007,907)	4	(2,316,503)	4	(2,946,165)	4	(3,691,827)	4	(3,437,297)	3	(3,170,926)	0	-
Soccer	2	3,940,141	2	831,390	5	2,414,209	3	3,228,754	3	(267,581)	2	(65,255)	0	-
Miscellaneous events	2	2,504,812	4	(149,357)	5	(159,175)	4	76,379	2	(67,502)	2	(458,609)	0	(3,283)
Subtotal Ticketed Events	9	\$ 3,445,149	17	\$ 2,245,599	10	\$ 1,733,441	13	\$ 1,522,405	12	\$ (2,333,932)	8	\$ (2,838,247)	0	\$ (3,370)
Subtotal Ticketed Events - Other Expenses														
Subtotal Special Events (weddings, corporate events, etc.)	186	\$ 1,762,804	204	\$ 3,867,077	127	\$ 3,583,453	113	\$ 3,610,923	100	\$ 2,362,523	79	\$ 1,492,331	0	\$ (29,556)
Subtotal Other Operating Expenses														
Total Non-NFL Net Revenue	195	\$ 5,207,953	221	\$ 6,079,016	145	\$ 5,316,894	126	\$ 5,163,328	112	\$ 18,501	87	\$ (2,741,014)	0	\$ (509,649)
Total Performance Rent paid to the General Fund		\$ 2,513,777		\$ 2,932,000		\$ 2,533,447		\$ 2,439,164		\$ -		\$ -		\$ -

- Data show that, more often than not, City staff support is utilized for money-losing events. In the context of competing priorities for recently reduced staff capacity, ***financial performance of events must be heavily considered.***

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2. Requested Information

FINANCIAL FEASIBILITY

- Stadium Manager is responsible for negotiating terms on behalf of the Stadium Authority for non-NFL events, and these negotiations impact how much revenue is generated.
- Stadium Manager has not complied with key terms in the COA and Management Agreement requiring that SCSA be provided with notice of future events and their negotiations (e.g., financial feasibility).
 - COA-P23 requirement of Annual Events Program
 - First Amendment to Management Agreement, Section 3.3 requirement of quarterly updates on events recently booked or under negotiations and related information
- SCSA is entitled to receive ongoing updates on negotiations with respect to financial performance.

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2. Requested Information

RECENT REDUCTIONS TO STAFFING RESOURCES

- City is experiencing COVID-induced staffing reductions, approximately 26% less resources throughout departments.
- Stadium Manager is committing City resources without advance coordination or notice of other local events.
- In the past, public safety departments have expressed concern with how staffing will be assembled for concurrent community events, require double overtime pay to secure resources, and/or contracting out with other law enforcement to ensure sufficient public safety resources are in place to meet the needs of the whole community.

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2. Requested Information

3. INCREASING CURFEW VIOLATION FEE

- The Stadium Development Permit does not include a citation fee for Non-NFL events that go past the curfew. Over the years, the City has relied on general City Code provisions issue citations and/or fines when necessary, including:
 - SCCC 8.30.030(h) – Public Nuisance (\$750)
 - SCCC 9.05.010 (c) – Disturbance of Peace (Fines range from not exceeding \$150 for the first violation to not exceeding \$900 for a fourth violation within a one- year period)
 - SCCC 9.10.040 – Noise or sound regulation (\$500)
 - SCCC 18.114.020 – Violations and Penalties (\$500)
- ***Stadium Manager uses Stadium Authority funds to issue payment for any violation fees, so the violation fees are not a tool to induce compliance.***

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2. Requested Information

4. 2018 COMMUNITY SURVEY RESULTS FOR NOISE AND THE CURFEW

- In 2017, the Council/Board directed implementation of a community engagement effort related to Levi's Stadium.
- Consultants presented the final results of the Stadium Authority Board Community Outreach and Engagement Project in June 2018:
 - Residents were dissatisfied with the level of traffic, parking, and “disruptive behavior” following stadium events.
 - In general, stadium-related issues were not “top-of-mind” concerns in relation to other issues, such as generalized traffic concerns and the high cost-of-living.
 - Stadium-related issues did become more important and higher intensity among the near neighbor population.

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2. Requested Information

4. 2018 COMMUNITY SURVEY RESULTS FOR NOISE AND THE CURFEW

- As part of a May 2018 solutions survey, the consultants found support for specific solutions to community concerns, particularly related to parking, neighborhood security, and stadium-related issues.
- In general, residents strongly supported services that would mitigate event-related issues following stadium events. Specifically, residents seek solutions to:
 1. Stadium-related traffic,
 2. Stadium-related parking,
 3. Disruptive behavior pre/post Stadium events (particularly loitering, security/enforcement and noise control), and
 4. Improving city-constituent communication.
- ***Residents were satisfied with the existing curfew system but were open to changes and additional community engagement on the issue.***

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2. Requested Information

4. 2018 COMMUNITY SURVEY RESULTS FOR NOISE AND THE CURFEW

- Consultants also provided solutions and items for further consideration to address the issues, including:
 - Engaging in partnerships with different entities, including the Stadium Manager and Santa Clara Santa Clara Valley Transportation Authority, specifically to alleviate traffic and parking problems
 - Engaging in proactive, in-house solutions to specific Stadium-related concerns.
 - In particular, it was recommended that the City consider targeted policy changes designed to mitigate disruptive behavior before/after stadium events.
- City and SCSA have implemented various efforts to mitigate neighborhood impacts and Stadium deployment, address Stadium-related traffic, parking, disruptive behaviors pre and post Stadium events, and increase communication to residents about stadium events.

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2. Requested Information

5. COMMUNITY ENGAGEMENT TO DETERMINE NUMBER OF CURFEW EXEMPTIONS

- Several years have passed since the 2018 Community Survey coupled with recent issues surfaced by City of San Jose.
- Staff recommends that no action be taken at this time if the Council is interested in pursuing further community engagement on the topic.
- Pending Council's direction, staff will implement a RFQ process to hire a consultant to implement a community engagement effort to solicit community input on the curfew. This would also provide an opportunity to receive input on the City's public safety deployment strategy.

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2. Requested Information

6. GREAT AMERICA'S NOISE CURFEW

- Great America is allowed to operate from 9:00 a.m. to 1:00 a.m., including attractions and entertainment venues, amplified outdoor entertainment, and to operate rides from 9:00 a.m. to midnight.
- The Planned Development Zoning for Great America outlines the following noise restrictions:
 - There shall be no amplified entertainment within 200 feet of the east property line, nor within 50 feet of the west and south property lines of the park. All amplified entertainment shall be directed away from the nearest property line.
 - **Amphitheatre: No amplified music after 11:00 p.m. on Friday/Saturday and 10:00 p.m. Sunday through Thursday.**
 - Fireworks and pyrotechnics are only allowed between the hours from 10:00 a.m. and 10:00 p.m.

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2. Requested Information

7. OTHER CITIES' CURFEW RESTRICTIONS FOR STADIUMS LOCATED IN RESIDENTIAL AREAS

- **Regional outdoor venues (Oakland Coliseum, Oracle Park, etc.):**
 - Weekdays (Sunday-Thursday): Curfew ranges from 10:00 p.m. to 12:00 a.m.
 - Weekends (Friday-Saturday): Curfew ranges from 10:00 p.m. to 12:00 a.m. (excluding Oakland's recent Emergency Order)
- **Southern California outdoor venues (Hollywood Bowl, LA Memorial Coliseum, etc.):**
 - Weekdays (Monday-Thursday): Curfew ranges from 11:00 p.m. to no restrictions
 - Weekends (Friday-Saturday): Curfew ranges from 11:00 p.m. to no restrictions
 - Sundays: Curfew ranges from 10:30 p.m. to no restrictions
 - *Note, only some Southern California cities have responded at the time of this report*

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2. Requested Information

7. OTHER CITIES' CURFEW RESTRICTIONS FOR STADIUMS LOCATED IN RESIDENTIAL AREAS

- Curfew restrictions are set forth by various legal sources, such as lease agreements and city code.
- Levi's Stadium's curfew as outlined under COA-P22(c) is consistent with the curfew timeframe for regional outdoor venues when benchmarked to other venues.

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3. Noise Monitoring

- As indicated by the Stadium EIR, the noise impacts for large non-NFL events are significant and unavoidable.
- The City's noise monitoring program is a key component of Stadium monitoring efforts and should be considered with the policy alternatives related to curfew exemptions.

COA-P23: *"...For sound system installations and modifications within the stadium site, the target for maximum sound level exposure in residential areas to the east and south shall be 60 dBA, in order to minimize noise impacts to sensitive receptors."*

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3. Noise Monitoring

- While the EIR anticipated slightly higher noise impacts for non-NFL events, staff uses target 60 dBA threshold to ensure surrounding neighborhoods are not overly impacted by event noise.
- Noise issues have been presented to the Council, including December 2017 Study Session.

NOISE MONITORING REPORTS

- Councilmembers have expressed interest in improved noise monitoring reports. ***This is an opportunity for Council to provide direction and suggestions on specific details/data to include in future noise monitoring reports.***
- Staff will use feedback to either:
 1. Work with existing consultant to modify agreement's scope of work and return with cost proposal, or
 2. Implement procurement process for a new consultant and include Council's feedback for improved noise reports.

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4. Policy Alternatives

1. Maintain status quo and continue Council direction to the City Manager relative to COA-P22(c);
2. Remove former Council direction to the City Manager and adhere to COA-P22(c);
3. Consider a Pilot Program to observe how other important policy/topics are impacted by directing staff to return with a Draft Policy for a Levi's Stadium Non-NFL Event Curfew Exemption Pilot Program. The Pilot Program would allow for exemptions based on a number of events established by the EIR and Council direction, as follows:
 - a. Stadium Manager to cure its Stadium Management Agreement breach/violation by regularly providing quarterly updates, submitting an Annual Events Program, and adhering to all terms set forth under the Stadium Management Agreement, Section 3.3 and the Stadium Development Permit, including COA-P19 and COA-P22(a);
 - b. Stadium Manager to ensure noise levels do not exceed the target dBA outlined in COA-P23 for non-NFL events;

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4. Policy Alternatives

- c. Pilot Program to be established during the Summer 2022 when school is not in session, to mitigate sleep deprivation for youth, with a public evaluation in Fall 2022 to determine next steps for Summer 2023;
 - d. No weekday event should exceed an 11:00 p.m. curfew;
 - e. Pyrotechnics should be planned for no later than 11:00 p.m.;
 - f. Any events booked during 2022 for future years outside of the Pilot Program term will be authorized and must meet the terms of the Pilot Program;
 - g. Financial feasibility of the event, including but not limited to, generating revenue for the Stadium Authority and falling under a category of profitable Non-NFL Events (no Pilot events can be money-losing events);
 - h. There are sufficient public safety staffing resources to accommodate the extended hours and proposed date of the event [based on 3(a)]; and,
 - i. Stadium Manager agrees to work collaboratively with the City and Stadium Authority to mitigate any additional traffic, parking, and pre and post event disruptive behaviors, such as loitering, security/enforcement and noise control, associated with the extended hours of the event.
4. Any other action as directed by Council.

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Recommendation

Any action taken by the City Council should result in the Stadium Manager curing existing violations with standing legal agreements and that the parameters of a Draft Council Policy should improve compliance, financial performance, improved neighborhood mitigations, and improved coordination with the Stadium Authority.

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The seal of the City of Santa Clara, California, is circular. It features a central illustration of a mission-style building with a red roof and a bell tower, set against a blue sky with clouds and a green field. The year "1852" is inscribed below the building. The outer ring of the seal contains the text "CITY OF SANTA CLARA CALIFORNIA" at the top and "THE MISSION CITY" at the bottom, separated by small dots.

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